

Taxation and Revenue Department
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TOBACCO PRODUCTS TAX ACT
SECTION 7-12A-1 through 7-12A-10 NMSA 1978
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7-12A-1. SHORT TITLE.--Chapter 7, Article 12A NMSA 1978 may be cited as the "Tobacco Products Tax Act".
(Laws 1986, Chapter 112, Section 2)

7-12A-2. DEFINITIONS.--As used in the Tobacco Products Tax Act:

A. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "distribute" means to sell or to give;

C. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

D. "first purchaser" means a person engaging in business in New Mexico who manufactures tobacco products or who purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

F. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

G. "tobacco product" means any product, other than cigarettes, made from or containing tobacco.

(Laws 2009, Chapter 197, Section 20)

7-12A-3. IMPOSITION AND RATE OF TAX; DENOMINATION AS "TOBACCO PRODUCTS TAX"; DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. The tax imposed by Subsection A of this section may be referred to as the "tobacco products tax".

C. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

(Laws 2009, Chapter 197, Section 21)

7-12A-4. EXEMPTION; TOBACCO PRODUCTS TAX.—

A. Exempted from the tobacco products tax is the product value of tobacco products sold:

(1) to or by the United States or any agency or instrumentality thereof;

(2) to the governing body or any enrolled tribal member licensed by the governing body of an Indian nation, tribe or pueblo to be distributed on the reservation or pueblo grant of that Indian nation, tribe or pueblo; or

(3) the state of New Mexico or any political subdivision thereof.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities.

(Laws 2009, Chapter 197, Section 22)

7-12A-5. DEDUCTION; INTERSTATE SALES.--The product value of tobacco products sold and shipped or given and shipped to a person in another state may be deducted from the product value subject to the tax imposed by the Tobacco Products Tax Act; provided that the department may require the person to submit proof satisfactory to the department that the tobacco products have been sold and shipped or given and shipped to a person in another state.

(Laws 1986, Chapter 112, Section 6)

7-12A-6. REFUND OR CREDIT OF TAX.--The department shall allow a claim for refund or credit, as provided in Sections 7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax paid on tobacco products destroyed or returned to the seller by the first purchaser as spoiled or otherwise unfit for sale or consumption; provided that the department may require proof satisfactory to the department that the tobacco products have been destroyed or returned and that the person claiming the refund is the person who paid the tobacco products tax on the destroyed or returned tobacco products.
(Laws 1988, Chapter 95, Section 14)

7-12A-7. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS OF SELLING TOBACCO PRODUCTS IN NEW MEXICO.--Each person engaged in the business of selling tobacco products in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling tobacco products in New Mexico shall furnish such information as may be requested by the department concerning the person's vending machines or other places of business where tobacco products are sold.
(Laws 1986, Chapter 112, Section 8)

7-12A-8. RETENTION OF INVOICES AND RECORDS; INSPECTION BY DEPARTMENT.--

A. Each person who sells tobacco products in New Mexico for resale in New Mexico shall maintain a file of copies of the invoices of sale for three years from the end of the year the sale was made. The invoices shall indicate the date of sale of the tobacco products, quantity of tobacco products sold, the price received and the name and address of the purchaser.

B. Each person who sells tobacco products in New Mexico shall maintain a file of copies of invoices under which the person purchased tobacco products for three years from the end of the year during which tobacco products were purchased. The invoices shall indicate the date of purchase, the quantity of tobacco products purchased, the price paid and the name and address of the seller.

C. All invoices required to be kept under this section may be inspected by the department along with any stock of tobacco products in the possession of the purchaser or seller.

(Laws 1988, Chapter 95, Section 15)

7-12A-9. PENALTIES.--Any person selling tobacco products in New Mexico and required by the provisions of Section 7-12A-8 NMSA 1978 to retain invoices who willfully fails to retain the invoices shall, upon conviction thereof, be fined not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500). Jurisdiction over such actions is hereby granted to the magistrate courts.

(Laws 1986, Chapter 112, Section 10)

7-12A-10. PROHIBITION.--The provisions of the Tobacco Products Tax Act shall not apply in any case in which New Mexico is prohibited from taxing under the constitution of New Mexico or the constitution or laws of the United States.

(Laws 1986, Chapter 112, Section 1)
